



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/080,053	02/21/2002	Kenneth Houston	DR-332J	6756
7590 07/26/2004				
Iandiorio & Teska 260 Bear Hill Road Waltham, MA 02451-1018		EXAMINER BEISNER, WILLIAM H		
		ART UNIT PAPER NUMBER		
		1744		
DATE MAILED: 07/26/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/080,053

Applicant(s)

HOUSTON ET AL.

Examiner

William H. Beisner

Art Unit

1744

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-14.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
William H. Beisner  
Primary Examiner  
Art Unit: 1744

Continuation of 2. NOTE: Amended claim 1 and new claims 15-17 raise new issues that require further consideration and/or search with respect to "the electrical connection"(claims 1, 15 and 16) and "instantaneously and continuously" (Claim 17).

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's comments concentrate on the fact that the reference of Willner et al. does not disclose that the biosensor is sealed within the vessel and that the references of Hoberman and Fraatz et al. teach away from the use of a biosensor that would include an electrical connection. Applicant's comments are not persuasive because the reference of Willner et al. discloses the structure of the claimed biosensor device. The issue at hand is whether the prior art of record suggests to one of ordinary skill to use the sensor disclosed by the reference of Willner et al. in a "sealed" vessel. The Examiner has cited evidence of record which suggests that the use of the biosensor disclosed by Willner et al. in a "sealed" vessel would have been obvious to one of ordinary skill in the art. First, while the reference of Willner et al. employs the disclosed biosensor in a "flow" analysis system as a preferred embodiment, the reference also suggests that the sensor is capable of use in a "stationary" sample (See page 4, lines 1-5). Next, the references of Hoberman and Fraatz et al. were cited as evidence that it is known in the art to analyze a culture sample within a "sealed" vessel so as to avoid contamination (See column 2, lines 37-68, of Hoberman, and column 2, lines 16-47, of Fraatz et al.) regardless of the sensor system employed. Clearly one of ordinary skill in the art would recognize that no modifications would be required to employ the biosensor of Willner et al. within a sealed vessel, especially since the reference discusses the use of "piezoelectric immunoassaying in the liquid phase has important advantages as it allows stationary and flow analysis of aqueous samples". With respect to applicant's comments that the reference of Willner et al. teaches away from the use of sealed container in view, see pages 5-6 of the Final Office action, dated 4/21/04. With respect to Applicant's comments concerning the reference of Karube et al., see page 7 of the Final Office action dated 4/21/04.